

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

JUL 22 2008

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

HUBEI GEZHOUBA SANLIAN  
INDUSTRIAL, CO., LTD., a company  
located in Hubei Province, People's  
Republic of China; HUBEI PINGHU  
CRUISE CO., LTD., a company located in  
Hubei Province, People's Republic of  
China,

Plaintiffs - Appellants,

v.

ROBINSON HELICOPTER COMPANY,  
INC., a California corporation,

Defendant - Appellee.

No. 07-55649

D.C. No. CV-06-01798-FMC

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Florence Marie Cooper, District Judge, Presiding

Argued and Submitted June 12, 2008  
Pasadena, California

Before: TROTT, WARDLAW and FISHER, Circuit Judges.

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\*This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Hubei Gezhouba Sanlian Industrial and Hubei Pinghu Cruise (collectively, “Sanlian”) appeal the district court’s grant of summary judgment in favor of Robinson Helicopter Company (“RHC”). We have jurisdiction under 28 U.S.C. § 1291, and we reverse and remand.

The district court erred in finding that the California state action was no longer pending after January 27, 1998. *Cf. Archibald v. Cinerama Hotels*, 544 P2d 947, 950-52 (Cal. 1976) (distinguishing between impact of dismissal and stay on basis of forum non conveniens). Accordingly, the tolling provision remained in place when Sanlian filed its complaint in the People’s Republic of China (“PRC”) in January 2001 and there was no basis for finding that enforcement of the PRC judgment would violate California’s public policy against stale claims.

Service of process does not provide an alternative basis for summary judgment. There are material issues of fact regarding whether Elizabeth Rougeau was authorized to receive service for RHC, whether she was given a “Summary of the Document to be Served” or a “Request for Service Abroad” and whether RHC received adequate notice of the PRC action. *See generally Simo v. Union of Needletrades*, 322 F.3d 602, 610 (9th Cir. 2003) (“Summary judgment is improper if ‘there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.’”)

(quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)). We decline to resolve in the first instance whether service of process that is effectuated under Article 5(a) of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters must strictly comply with federal or state rules of service for the ensuing foreign judgment to be recognized under California's Uniform Foreign Money Judgements Recognition Act or whether a more general due process concept of notice is sufficient. The district court should address these issues on remand.

**REVERSED and REMANDED.**